

**Hearing of the
House Resources Committee
on The Effects of Washington Aqueduct Discharges
on the Endangered Shortnose Sturgeon
June 19, 2002**

Members Attending

James Hansen (R-UT, Chair), George Radanovich (R-CA), Dennis Rehberg (R-MT), Thomas Osborne (R-NE), C.L. Otter (R-ID), Donna Christian-Christensen (D-VI), Richard Pombo (R-CA), Tom Udall (D-NM), Dale Kildee (D-MI), Jay Inslee (D-WA)

Witness List

Mr. Don Murphy- Deputy Director, National Park Service

Mr. Tim Keeney- Deputy Assistant Secretary for Oceans and Atmosphere, NOAA

Mr. Dominic Izzo- Principle Deputy Assistant Secretary of Army for Civil Works, US Army
Corps of Engineers

Mr. Ben Grumbles- Deputy Assistant Administrator, Office of Water, Environmental Protection
Agency

Opening Statements

Chairman Hansen opened the hearing by stating that, had the Shortnose sturgeon issue been raised on the West Coast, enforcement would have been much more rigorous. He mentioned that disparity of enforcement between the East and West coasts is quite obvious and needs to be dealt with. Congressman Radanovich echoed Rep. Hansen's argument and then asked a series of questions regarding the Shortnose sturgeon and why nothing has been done to date concerning the release of sludge (sediment) from the Washington Aqueduct. Delegate Christian-Christensen made remarks about the fact that this is not the only case of pollution dumping in the nation and suggested that the Resources Committee begin to focus on others as well.

Questions

Congressman Radanovich asked Deputy Assistant Secretary Grumbles and Deputy Assistant Secretary Keeney whether it was known that the Potomac was potential habitat for Shortnose sturgeon. Deputy Assistant Secretary Grumbles mentioned that the last sighting of the fish before 1996 was in 1898 thus leading them to conclude that there was no compelling scientific evidence that Shortnose sturgeon was in the area prior to 1996. Rep. Radanovich then mentioned that the law says that even if there is a possibility that the species would be effected, something must be done to protect it. Deputy Assistant Secretary Keeney mentioned that a potential habitat does not require protection and that there is no evidence of Shortnose sturgeon within at least 50 miles of the Washington Aqueduct.

Delegate Christian-Christensen inquired about the sludge's effect on the C&O Canal National Historic Park and whether the Parks Service has done anything to stop the impacts it has made.

Deputy Director Murphy mentioned that they do not have the authority to do anything but they are looking into their options to help the situation. Deputy Director Murphy suggested that more research be done in the park and encouraged the EPA and the Corps to participate.

Congressman Osborne asked, “Irrespective of the Endangered Species Act, is the dumping of sludge acceptable?” Deputy Assistant Secretary Grumbles responded that though it may not be appropriate to discharge toxic sludge, on occasion drinking water facilities have residual solids that can be discharged into receiving waters when a NPDES permit has been granted. Ability to acquire a permit depends on what will be released and the potential effect on habitat. Deputy Assistant Secretary Keeney mentioned that NMFS applies the ESA wherever it is necessary. He also added that though it seems that the East Coast does not get treated equally as far as ESA enforcement is concerned, the two coasts are very different, mainly that there is less habitat and fewer species on the East Coast.

Representative Tom Udall brought up the discharge of chlorinated water from drinking water facilities to which Grumbles stated that the release is done under the requirements of the Clean Water Act. He also mentioned that usually the state is responsible for giving permits to those facilities. Deputy Assistant Secretary Grumbles said the Washington Aqueduct facility is unique in that it is run by a federal agency and that the release of sediment is done intermittently unlike most facilities where small amounts are constantly discharged. This makes the discharge at the Washington Aqueduct seem worse than constantly discharging facilities around the nation.

Radanovich questioned whether either constant or intermittent release of sediment was better. He mentioned that the ultimate solution to this problem was identified by a Corps of Engineers proposal several years ago to build a sludge treatment facility and questioned why this method has never been brought to the table. Deputy Assistant Secretary Grumbles responded that the best way to proceed with a solution is to find out what the scientific impact of sediment release is on the fisheries. There also needs to be information gathered through public comment. There is currently an ongoing scientific debate on whether sturgeon are present or whether they use the area for spawning. It would be premature to mandate construction on a facility when the scientific impacts are not yet known.

Congressman Rehberg and Congressman Otter were concerned that the EPA allows facilities with expired permits to continue discharging sludge and also allows permits to be granted when studies are pending concerning the safety of discharge. Deputy Assistant Secretary Grumbles responded that expired permits can be extended if the facility submits an application 180 days before permit expiration. That extension lasts until the permit is re-issued. Changes can be made to the permit if a study finds that there is a concern. The concept of the permit is that it reflects adaptive concerns. Rep. Otter expressed concern that there was no permit in place from 1989 to 1994 and yet no fines were levied against the Corps of Engineers.

Representative Otter questioned the EPA’s approach to sediment reduction. The EPA will request a percentage of reduction of sediment, in this case- 85%. Otter returned to the disparity of East vs. West by explaining that it is much easier to reduce pollution by 50% in a very polluted area (such as the East Coast) vs. one that is not very polluted (West Coast). Deputy

Assistant Secretary Grumbles stated that the percentages are based on both technology based control and watershed based holistic control.

Reps. Radanovich and Otter concluded the hearing by asking Deputy Assistant Secretary Keeney about what would be done if NMFS discerns that the sediment dumping is effecting the spawning of sturgeon. Deputy Assistant Secretary Keeney responded by saying that as of now there has not been any evidence of spawning in the area and that more scientific research must be done to figure out what effects the sediment discharge may have on the species. NMFS can only begin to discuss necessary enforcement if a conclusion is made based on science and consultation with the EPA that the area in question is a Shortnose sturgeon habitat. Rep. Otter asked if the habitat may effect the species. Deputy Assistant Secretary Keeney replied that if they are present, there is a possibility. Rep. Otter then asked how this situation is different from the Klamath Basin case. Otter wondered why in Klamath the “may effect” determination was enforced whereas in the Potomac River, it appears to have been ignored. Deputy Assistant Secretary Keeney said he would do a study comparing the two and get back to him with the results.

Closing statements

Rep. Radanovich closed by saying that though he is glad that the hearing was taking place and that the agencies are proceeding with studies, he is amazed at the length of time that has passed before anything has been done, especially because of the extensive amount and quick enforcement that occurs on the West Coast.